



January 25, 2011

Docket A-042090 and Docket T-101661

via Online web Portal

WUTC Commissioners and Staff:

The following is Whidbey Seatac Shuttle's summary the Open Meeting/ Work Shop held at the WUTC offices in Olympia, Washington on January, 20, 2011.

In a memo from David Gomez (WUTC) circulated at the December 7, 2010 CR-101 work shop, an email and WEB posting was to be provided to stakeholders summarizing the December 7 meeting and staffs' new proposals based upon input from stakeholders at that meeting. That information was not available on the WEB as of 3:00 PM on Wednesday, January 19, 2011 and no email was ever sent to stakeholders with the documents. The first time that this information was made available was at the January 20<sup>th</sup> meeting.

The workshop was held as an Open Meeting which changed the tenor of the meeting. Rather than be a free flow of ideas it became a more formal meeting run and directed by Greg Kopta. On the positive side the commissioners were able to take action regarding Order No. 3 at the time of the meeting. However, this speaks to the lack of communication between staff and the stakeholders as no notice of the Open Meeting portion was provided to stakeholders.

It became apparent to all parties that Auto transportation and Solid Waste Haulers are very different industries and cannot be regulated similarly. Rate cases and Fuel Surcharges must be treated differently and the investigation of such items must be segregated.

Staff did not comment on or take into consideration any of the stakeholder's comments regarding RCW 81.68 and WAC 480-30-421 regarding the authority of the commission to regulate profits rather than fares and the clear exemption of fuel surcharges from rate making under WAC. These two items are at the heart of the matter and have been consistently ignored by staff.

Eugene Eckhardt (WUTC) told the commission that fuel has been and continues to be volatile. He stated that the future of oil and therefore fuel remains uncertain, thereby recanting the ONLY stated purpose for Order No. 3.

Para 4 Order No 3, Docket A-042090

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Fuel prices have remained relatively stable since June 2009, and are predicted to remain so for the foreseeable future, given current economic conditions and a weaker demand. The steep month-to-month changes seen through June of 2009 are no longer present. Consequently, the need for a simplified, expedited process by which the Commission authorized fuel surcharges no longer exists.

A request was made of the commission to rescind Order No. 3 based on Mr. Eckhardt's position, however the commission stated that there were other reasons for Order No. 3 and they would not rescind it. A review of Order No. 3 however shows that the only stated reason for Order No. 3 was in the commission's Conclusions section of the Order in Para. 12 quote:

"The Commission issued Order No.2 as an administrative convenience in response to rapidly rising and fluctuating fuel prices experienced at that time. Currently fuel prices have leveled out and become relatively stable. Therefore, the rationale for Order No. 2 no longer exists".

The Governor issued Executive Order 10-06 on November 17, 2010, restraining agencies and departments from creating any rule or policy that would adversely affect small business or promote a regulatory climate of uncertainty for the regulated. The only exceptions to this order are for the health, safety or welfare of the public or to protect public resources. This CR-101 and the proposals of the staff are all in exact opposition to the Executive Order. Mr. Kopta attempted to stifle any mention of the Order at the meeting in an apparent effort keep the stakeholders from being aware of it and its application in this proceeding. He attempted to cut off comments regarding the order stated that "we know the law" so let's move on. At the conclusion of the meeting an attempt to understand his position regarding the Executive Order was made but he refused comment other than that we (WUTC) don't think that it applies. No further explanation was offered.

It was pointed out by stakeholders that we did not have any lead time to examine staffs' proposals and that no mechanism was in place to address a potential flood of rate cases; therefore we suggested that the commission adhere to the Executive Order and modify Order No. 3 to have an effective date commensurate with that order, 1/1/12.

The commission did take action and modified Order No. 3's effective date to 90 days from February 1, 2011 to May 1, 2011 and stated that it would need to be checked for compliance with Executive Order 10-06.

Finally, there was a comment made by the Chairman that perhaps consumers were paying too much today if revenues were up and costs were down. There are two errors in this statement. First, a fare set in 2005 cannot be too high to the consumer when the actual CPI adjusted fare is over 20% less in today's dollars than it was in 2005. Second, costs

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have NOT gone down at all in any area of any shuttle's expenses since 2005 and therefore there should NEVER be a reason to reduce fares. Another commissioner stated in 2007 that the WUTC would never lower a company's fares as a result of a rate hearing, yet that did happen to one operator and was later reversed. There is no case in which a 5 or 6 year old fare can be considered excessive in light of inflation and CPI increases over the same period even after adding in a small 1-2% of fare recovery for significantly increased fuel prices. This must be understood by staff and the Commission.

We certainly hope that staff is more forthcoming with information following this meeting. Having a 90 day extension does us no good if we have no idea what staff is formulating and the arguments for any such changes. We should not be adversaries, but working together, however, to date staff has been secretive, non-communicative and has not presented a rationale for this sudden change in rule or policy particularly in light of the Governor's Order.

Sincerely,

Mike Luaver  
John Solin  
Members  
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